

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN DOE,

Plaintiff,

v.

AMHERST COLLEGE, CAROLYN
MARTIN, JAMES LARIMORE, TORIN
MOORE, SUSIE MITTON SHANNON,
and LAURIE FRANKL,

Defendant.

No. 16-MC-00128-RSL

NON-PARTY SANDRA JONES' REPLY IN
SUPPORT OF HER MOTION TO QUASH
SUBPOENA OR IN THE ALTERNATIVE
MOTION FOR A PROTECTIVE ORDER

NOTE ON MOTION CALENDAR:
August 12, 2016

ORAL ARGUMENT REQUESTED

PLAINTIFF'S REQUEST FOR TELEPHONIC HEARING

Plaintiff, in his opposition, has requested that the parties be able to appear for any hearing scheduled on Ms. Jones' Motion via telephone. Should the Court grant oral argument, Ms. Jones does not object to any other party appearing by phone. Counsel for Ms. Jones however will appear in person for any hearing scheduled on the Motion.

{W1033724 JCC}NON-PARTY SANDRA JONES'
REPLY IN SUPPORT OF HER MOTION TO
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PROTECTIVE ORDER – 1
(16-MC-00128-RSL)

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REPLY TO PLAINTIFF'S OPPOSITION

In a recent trend, students expelled for sexual misconduct have begun filing civil lawsuits, seeking new avenues to appeal student conduct hearings after exhausting school procedures. Plaintiff, John Doe, is one such student who was expelled after his school found him responsible for sexual assault. In doing so, Mr. Doe now improperly seeks to re-litigate the student conduct hearing. In opposing Ms. Jones' Motion to Quash or in the Alternative Motion for a Protective Order ("Motion"), Plaintiff fails to establish both relevance and proportionality and as such, Ms. Jones asks the Court to grant the proposed relief.

I. Plaintiff's Opposition Demonstrates the Lack of Relevance in the Evidence Sought

Initially, Ms. Jones notes that Plaintiff's pleading starts in the same fashion as virtually every communication from Plaintiff, an aggressive attempt to paint Ms. Jones in a negative and promiscuous light citing only to Plaintiff's own amended complaint as the source. In Plaintiff's Opposition to the Motion, Plaintiff identifies a list of areas of examination for Ms. Jones's deposition that have little-to-no relevance to either his Title IX or breach of contract claims against the school but instead represents a transparent attempt to harass Ms. Jones. These questionable areas of discovery are as follows:

1. Why Ms. Jones decided to pursue a disciplinary hearing,
2. How Ms. Jones decided to pursue a disciplinary hearing,
3. Why Ms. Jones delayed her report to the College,
4. Ms. Jones' personal expectations disciplinary process,
5. Ms. Jones' perception of the environment on the campus,

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REPLY IN SUPPORT OF HER
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HER MOTION TO QUASH SUBPOENA OR IN
THE ALTERNATIVE MOTION FOR A
PROTECTIVE ORDER – 2

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- 1 6. How Ms. Jones explains alleged inconsistencies between her texts and other
- 2 statements,
- 3 7. Other sexual history between Ms. Jones and the witness identified as ML,
- 4 8. How Ms. Jones explains her sexual history with ML,
- 5 9. What Ms. Jones was intending when she sent each text message,
- 6 10. And what other text messages or emails exist.

7

8 Though these areas might be relevant *if* this litigation involved retrying the code of

9 conduct hearing, it does not here. Such a retrial is expressly prohibited in a civil proceeding,

10 and Plaintiff makes no effort to explain the nexus of the discovery sought to the actual

11 pending claims and instead generically cites to the wide scope of discovery.¹ Not even

12 Plaintiff suggests that the ultimate truth or veracity of the sexual assault is a proper basis for

13 any claim in this litigation.

14 Plaintiff next seeks to compare this Motion to an earlier motion for a protective order

15 denied by the forum court regarding hearing panelist Eric Hamako. In that ruling, the forum

16 court appropriately found that as one of the three panelists that actually made the

17 determination on Plaintiff's case, Mr. Hamako had "core information relevant to

18 [Plaintiff's] claims of gender discrimination." Exhibit C at 13. Additionally, given the clear

19 relevance of Hamako's testimony as a hearing panelist on Plaintiff's claims, the forum court

20 did not even attempt to make the proportionality review required here.

21 Plaintiff's other area of discovery sought— communications between Ms. Jones

22 and Amherst – may have some arguable relevance. But to the extent that the Court finds

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24 ¹ Plaintiff also mistakenly claims that the protections of sexual assault victims contemplated in Fed. R. Evid.

25 412 does not apply to discovery. As stated in the Motion, the comments in Fed. R. Evid. 412 make clear that

26 courts should fashion protective orders to address discovery in civil proceedings involving alleged sexual

27 assault. Motion, at 10.

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 HER MOTION TO QUASH SUBPOENA OR IN
 THE ALTERNATIVE MOTION FOR A
 PROTECTIVE ORDER – 3

(16-MC-00128-RSL)

those areas of discovery relevant, a narrowly tailored order on the subpoena duces tecum and written deposition questions would more than suffice.

II. Plaintiff has Not Even Attempted to Establish Proportionality as Required

Plaintiff has further failed to meet his burden to show that the discovery sought is proportional to the needs of the case. The party seeking discovery bears the burden of establishing both the relevancy and proportionality of the evidence sought. *Gilead Scis. Inc. v. Merck & Co., Inc.*, No. 13-cv-04057, 2016 WL 146574 at * 1 (N.D. Cal. Jan. 13, 2016). Though Ms. Jones herself has suggested proportional means of achieving discovery, Plaintiff has chosen to not even address this requirement, and as such, the Motion should be granted.

III. Undue Burden is Clear in this Case Where Plaintiff Has Sought to Harass Ms. Jones

Plaintiff remarkably suggests that the discovery would not pose an undue burden upon Ms. Jones yet noticeably avoids addressing the allegations in Ms. Jones's Motion regarding the repeated and disparaging media appearances by Plaintiff's counsel. Aside from the national television interviews which attack Ms. Jones (as identified in Ms. Jones' Motion), Plaintiff has also taken the clear position in other pleadings that only student names are justified to be kept from the public and nothing more. *See* Exhibit A, at 7 (Plaintiff's Proposed Opposition to Amherst's Motion to Seal). Given the Plaintiff's varying position on confidentiality as well as his counsel's proclivity to smear Ms. Jones on national television, Plaintiff's assurances are of no value. Moreover, the fundamental notion of examination of a non-party to a case on her sexual abuse raises independent and justifiable concerns about undue burden.

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PROTECTIVE ORDER – 4

(16-MC-00128-RSL)

1 Given the circumstances presented, this Court should exercise its discretion under
2 Fed. R. Civ. P. 26(c) to fashion remedies that limit the burden on Ms. Jones. Those
3 remedies include requiring Plaintiff to first seek information from other sources (such as
4 Defendants) as well as use of limited written questioning in lieu of unlimited oral testimony.
5 Such relief is appropriate and fair to all parties and Ms. Jones asks this Court for an order
6 reflecting the same.

7
8 **CONCLUSION**

9 For the forgoing reasons, Ms. Jones asks this Court to GRANT her motion.

10 DATED this 12th day of August, 2016.

11
12 s/John Clune

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. I further certify that I have emailed the foregoing to the attorneys listed below.

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PROTECTIVE ORDER – 6

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